

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 EB-08 /031 W
-----241429 027290 /43

R 241112Z FEB 77
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INFO SECSTATE WASHDC 1921
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AMEMBASSY TRIPOLI
AMEMBASSY TUNIS
/AMEMBASSY ATHENS 1168

UNCLAS SECTION 1 OF 2 DAMASCUS 1282

ATHENS FOR RTDO

E.O. 11652: N/A
TAGS: BENC, BGEN, SY
SUBJECT: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES

REF: 76 A5955 OF 12/13/76

EMBASSY RESPONSES BELOW KEYED TO QUESTIONS POSED IN REFTEL:
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1. PRICE: SUBJECT TO NEGOTIATION, BUT ALMOST ALWAYS FIXED PRICE,
LUMP SUM BIDS. ESCALATION CLAUSES HAVE TURNED UP RECENTLY IN SOME
LARGE CONTRACTS, OWING TO SYRIA'S CURRENT HIGH RATE OF INFLATION
(EST. 20-30 PERCENT). COST-PLUS CONTRACTS ARE VERY RARE. GOVERNMENT
CONTROLS PRICES OF ALL COMMODITIES PROCURED LOCALLY; IMPORT OF
COMMODITIES TO EXECUTE A CONTRACT REQUIRES SPECIAL PERMISSION. ON

SUCH IMPORTED COMMODITIES, GOVERNMENT ON PUBLIC-SECTOR CONTRACTS HAS BEEN KNOWN TO REIMBURSE FOREIGN CONTRACTOR FOR UNANTICIPATED COMMODITY COSTS WHEN THE INCREASE IN THE PRICE OF THE COMMODITY EXCEEDS 15 PERCENT DURING THE LENGTH OF THE CONTRACT. ALL THIS SHOULD BE SPELLED OUT IN CONTRACT. GOVERNMENT RARELY PROVIDES FOR DEMURRAGE CHARGES; FOREIGN SUPPLIERS SHOULD ENDEAVOR TO GET WRITTEN INTO CONTRACT PRIORITY PORT UNLOADING PRIVILEGES FOR THEIR MATERIALS. PARTS PRICE ESCALATION CLAUSES: YES. PRACTICES-DIFFER BETWEEN PUBLIC AND PRIVATE SECTOR CONTRACTS, AND ALSO BETWEEN DIFFERENT AGENCIES OF THE PUBLIC SECTOR. FOR EXAMPLE, PURCHASING RULES COVERING "PUBLIC ECONOMIC SECTOR" (E.G. MINISTRY OF INDUSTRY AND ASSOCIATED STATE-OWNED FACTORIES) AND "PUBLIC ADMINISTRATIVE SECTOR" (E.G. MINISTRIES OF HEALTH, EDUCATION, AND DEFENSE) VARY SOMEWHAT. GOVERNMENT IS CONTRACTING PARTY IN 80-85 PERCENT OF FOREIGN TRADE TRANSACTIONS.

2. BID AND PERFORMANCE BONDS: USUALLY 2.5-5 PERCENT BID BONDS AND 10 PERCENT PERFORMANCE BONDS. BOND RATES NOT UNIFORM AMONG GOVERNMENT CONTRACTING AGENCIES. RATES OCCASIONALLY MAY BE NEGOTIATED DOWNWARD, BUT FOREIGN FIRMS' PAST EXPERIENCE IN SYRIA DOES NOT SEEM TO BE AN IMPORTANT FACTOR. NO AUTOMATIC REDUCTION IF FIRM IS IN JOINT VENTURE PARTNERSHIP WITH LOCAL FIRM. IMPORTED MACHINERY AND EQUIPMENT ARE NOT NORMALLY CONSIDERED AN OFFSET AGAINST BONDS. BONDS ARE ALMOST ALWAYS DEMANDED IN FORM OF UNCONDITIONAL BANK GUARANTEES. (DESPITE UNCONDITIONAL LANGUAGE OF BOND, HOWEVER, WE HAVE HAD NO COMPLAINTS OF ARBITRARY SYRIAN GOVERNMENT ACTION). EMBASSY HAS ENDEAVORED TO IMPRESS SYRIANS WITH THE DIFFICULTIES UNCLASSIFIED

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THIS PRACTICE CAUSES FOR AMERICAN SUPPLIERS. RECENTLY, AND FOR THE FIRST TIME SO FAR AS WE KNOW, THE GOVERNMENT ACCEPTED A SMALL SURETY BOND ON A USAID-FINANCED CONSULTANCY CONTRACT. ACCORDING TO LOCAL LAW, CONTRACTOR MUST ASSUME ENGINEERING RESPONSIBILITY ON PROJECTS, EVEN AFTER PERFORMANCE BOND IS RELEASED, FOR TEN YEARS AFTER TURNOVER.

3. FORCE MAJEURE: IS SOMETIMES SPELLED OUT IN TENDER CONDITIONS BUT ALWAYS IN FINAL CONTRACT. LABOR DISPUTES ARE AND DELIVERY DELAYS DUE TO PORT CONGESTION ARE NOT NORMALLY CONSIDERED FORCE MAJEURE CONDITIONS. LANGUAGE OF FORCE MAJEURE CLAUSES MAY BE NEGOTIATED. USUALLY, CONTRACTS GIVE GOVERNMENT PARTY THE AUTHORITY TO EVOKE FORCE MAJEURE CLAUSES, WITH PROVISIONS FOR ARBITRATION IN CASE OF DISPUTES.

4. TRAINING: TRAINING PROVISIONS, EITHER ON SITE OR AT SUPPLIER'S PLANT (OR BOTH) FREQUENTLY WRITTEN INTO CONTRACTS, WITH COST OF SUCH TRAINING FIGURED INTO FINAL FEE. ANY TRAINING EQUIPMENT IMPORTED AND REEXPORTED IS NOT SUBJECT TO DUTY (SEE PARA 14).

5. FOREIGN AND DOMESTIC WORKERS: NO BALANCE NORMALLY IS REQUIRED, BUT DEPENDING ON NATURE AND SIZE OF CONTRACT, SYRIANS EXPECT SOME SUBCONTRACTING TO LOCAL FIRMS (FOR EXAMPLE, CIVIL WORKS ON CONSTRUCTION PROJECTS). SHORTAGES OF SKILLED AND SEMISHILLED LABOR ARE INCREASING, AND OCCASIONAL SHORTAGES OF UNSKILLED LABOR ARE BEGINNING TO APPEAR. THIRD COUNTRY WORKERS ARE MOSTLY ALESTINIAN AND LEBANESE (MANY OF THE LATTER ARE TEMPORARY, OWING TO THE CIVIL DISTURBANCES IN LEBANON). WAGES FOR SKILLED CONSTRUCTION WORKERS HAVE BEEN SUBJECT TO HIGH INFLATION SINCE 1973 WAR; PRESENTLY, MASONS EARN ABOUT 50 SP PER DAY, HEAVY EQUIPMENT OPERATORS 2000 SP PER MONTH, CARPENTERS 1000-1200 SP PER MONTH, AUTO MECHANICS 1500 PER MONTH, AND UNSKILLED LABORERS 20-30 SP PER DAY (ONE US DOLLAR EQUALS 3.9 SYRIAN POUNDS). FOOD CLOTHING, MEDICAL AND DENTAL SERVICES, AND RECREATIONAL FACILITIES ARE AVAILABLE; ADEQUATE HOUSING EXISTS BUT IS QUITE EXPENSIVE, US EMPLOYEES ARE NOT SUBJECT TO LOCAL INCOME TAXES, UNCLASSIFIED

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AND THEIR EFFECTS MAY BE IMPORTED DUTY FREE, BUT THESE PRIVILEGES SHOULD BE DETAILED IN CONTRACT. NO PROBLEM WITH WORK AND RESIDENCE PERMITS, BUT FOREIGN EMPLOYEES MUST PASS A SECURITY CLEARANCE (USUALLY SATISFIED BY A LETTER FROM GOVERNMENT CONTRACTING AGENCY).

PAYMENTS BY FOREIGN EMPLOYERS TO SYRIAN WORKERS INCLUDE SOCIAL SECURITY

AND WORKMAN'S COMPENSATION AND POSSIBLY (DEPENDING ON CONTRACT AND NATURE OF WORK) FAMILY ALLOWANCES, TRANSPORTATION AND FOOD SUPPLEMENTS. NO SPECIFIC RULES FOR PAYING THIRD COUNTRY NATIONALS. THERE ARE NO KOREAN OR PHILIPPINE WORKERS IN SYRIA, SO FAR AS WE KNOW. THERE ARE PAKISTANI WORKERS EMPLOYED TEMPORARILY (AND ILLEGALLY) ON THEIR WAY TO AND FROM THE PILGRIMAGE TO MECCA.

6. CONTRACTS PROVIDE FOR ARBITRATION, USUALLY UNDER SYRIAN LAW IN SYRIAN COURTS. INTERNATIONAL ARBITRATION MAY BE SPECIFIED, IF FOREIGN PARTY INSISTS. INTERNATIONAL CHAMBER OF COMMERCE, PARIS, USUALLY IS THE TRIBUNAL TO WHICH DISPUTING PARTIES REFER. SYRIA IS A MEMBER OF THE NEW YORK CONVENTION OF 1958 FOR ENFORCING ARBITRATION AWARDS.

7. LOCAL AGENTS: AGENTS ARE LEGAL WHEN THEY ARE THE EXCLUSIVE REPRESENTATIVES FOR A FOREIGN FIRM, SYRIAN NATIONALS, AND DULY REGISTERED WITH THE MINISTRY OF ECONOMY AND FOREIGN TRADE. THEY ARE NOT LEGALLY REQUIRED, BUT IN MOST CASES ARE ESSENTIAL IN FACILITATING CONTACTS, PROVIDING TRANSLATING SERVICES, INTERPRETING LOCAL LAWS AND CUSTOMS, PROVIDING LONG-TERM FOLLOW-UP AND SERVICING, AND GENERALLY LOOKING AFTER FOREIGN CLIENT'S

INTEREST. THERE ARE IMPORTANT, IF NOT ESSENTIAL, SERVICES IN
A CULTURE WHOSE BUSINESS TRADITIONS EMPHASIZE DIRECT, FACE-
TO-FACE CONTACT AND NEGOTIATIONS. A SYRIAN ADMINISTRATIVE DECREE
DIRECTS GOVERNMENT PURCHASERS TO BUY DIRECTLY FROM FOREIGN
SUPPLIERS, BUT THIS RULE APPARENTLY DOES NOT EXCLUDE LEGAL,
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REGISTERED REPRESENTATIVES, BUT RATHER APPEARS TO BE DIRECTED

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ATHENS FOR RTDO

AGAINST THE MAVERICK COMMISSION AGENT WHO SEEKS TO ARRANGE DEALS BETWEEN FOREIGN SUPPLIERS AND A GOVERNMENT AGENCY IF ON A SPOT BASIS. EVEN IN THE LATTER CASE, THE RULE IS FREQUENTLY IF DISCREETLY IGNORED. COMMISSIONS AND FEES VARY ACCORDING TO NATURE AND COMPLEXITY OF CONTRACT PUSUED, AND MUST BE NEGOTIATED.

8. LOCAL PARTNERSHIPS, CORPORATIONS: NO SPECIAL ADVANTAGES ACCURE
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TO FOREIGN FIRMS ENTERING INTO A LOCAL PARTNERSHIP WITH A PRIVATE SYRIAN FIRMS; PRESUMABLY, SUCH A PARTNERSHIP WOULD BE SUBJECT TO SYRIAN BUSINESS TAXES FROM WHICH FOREIGN FIRMS IN SYRIA WOULD OTHERWISE BE EXAMPT. PARTNERSHIP MUST BE AT LEAST 51 PERCENT SYRIAN. NO WHOLLY-OWNED LOCAL CORPORATION EXISTS, EXCEPT BRANCHES OF FOREIGN FIRMS (E.G. PHILIPS, NCR). BRANCHES ARE TAXED AS LOCAL COMPANIES. THE GOVERNMENT, AFTER EXPERIENCING DISAPPOINTMENTS IN SOME TURN-KEY PROJECTS, IS LOOKING WITH FRESH INTEREST AT JOINT VENTURE ARRANGEMENTS WITH FOREIGN FIRMS. ONLY THREE SUCH JOINT VENTURES SO FAR HAVE BEEN ESTABLISHED: SYRIAN PETROLEUM CO./TRIPCO PETROLEUM CO. (US FIRM) FOR OFFSHORE EXPLORATION AND DEVELOPMENT-THIS VENTURE NOW SEEMS DEFUNCT; AL-FURAT TRACTOR CO./MOTORIBERCE (SPAIN) FOR A TRACTOR ASSEMBLY PLANT; AND TELECOMMUNICATIONS ESTABLISHMENT/CIT-ALCATEL (FRANCE) FOR ASSEMBLING ELECTRONIC COMPONENTS FOR TELEPHONES--INCORPORATED IN 1975 BUT NOT YET PRODUCING EQUIPMENT. IN SUCH JOINT VENTURES, THE GOVERNMENT HOLDS THE MAJORITY EQUITY AND THE FOREIGN FIRMS SUPPLIES THE TECHNOLOGY.

9. GRADUATED OR ADVANCE PAYMENTS: ADVANCE PAYMENTS OF FIVE TO 15 PERCENT ARE SOMETIMES GRANTED, AGAINST BANK GUARANTEE.

10. LOCAL SUPPLY: ORDINARILY, NO FAVORABLE EVALUATION IS GIVEN TO A FOREIGN CONTRACTOR WHO INFORPORATES LOCAL SUPPLY IN HIS IBD, UNLESS IT MAKES THE BID MORE ATTRACTIVE IN PRICE WITHOUT APPRECIABLY SACRIFICING QUALITY. MUCH, OF COURSE, DEPENDS UPON THE NATURE OF THE CONTRACT; IN TENDERS WHERE THE GOVERNMENT ESPECIALLY DESIRES FOREIGN TECHNOLOGY, DEPENDENCE UPON LOCAL SUPPLY MIGHT BE DISADVANTAGEOUS IN THE EYES OF THE EVALUATORS OF THE BID. SOME TENDERS PROVIDE FOR PAYMENT IN PART IN FOREIGN CURRENCY, IN PART IN SYRIAN CURRENCY; A FOREIGN FIRM MUST THEN CONSIDER LOCAL SUPPLY ACCORDINGLY. LOCAL SUPPLY MAY BE CONTRACTED SEPARATELY OR INCLUDED IN THE OVERALL CONTRACT; ESCALATION CLAUSES, BONDS, FORCE JAMEURE, ETC., REGULATED BY CONDITIONS LISTED ABOVE.
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11. BONDED AREAS: CUSTOM CLEARANCES NORMALLY PRESENT NO SERIOUS PROBLEMS. "BONDED AREAS" MAY BE ARRANGED.

12. LANGUAGE AND UNITS OF MEASUREMENT: TENDER WILL SPECIFY THE LANGUAGE REQUIRED: ARABIC, FRENCH, AND ENGLISH ARE WIDELY USED. METRIC MEASUREMENTS PREFERRED.

13. CORPORATE TAXES: CORPORATE TAXES ARE VISITED UPON CORPORATIONS RESIDING IN SYRIA (11 TO 66 PERCENT, DEPENDING UPON INCOME). FOREIGN FIRMS RESIDING OUTSIDE OF SYRIA AND DOING BUSINESS IN THE COUNTRY ARE EXEMPTED FROM CORPORATE TAXES (INCLUDES FIRMS WORKING IN SYRIA ON USAID-FINANCED PROJECTS). FOREIGN PARTICIPANTS IN JOINT VENTURE ARRANGEMENTS WITH SYRIAN GOVERNMENT ENTITIES MIGHT BE EXEMPTED FROM CORPORATE TAXES BY SPECIAL PROVISION. A WHOLLY-OWNED LOCAL CORPORATION WOULD BE SUBJECT TO TAX.

14. MACHINERY AND EQUIPMENT: MACHINERY, EQUIPMENT, AND SUPPLIES IMPORTED FOR A PROJECT MAY BE EXEMPTED FROM CUSTOMS DUTIES BY "TEMPORARY ADMISSION" PROVISION IN CONTRACT. SUCH MATERIAL MAY BE REEXPORTED OR, AFTER PAYMENT OF DUTY AS USED EQUIPMENT, SOLD. THERE IS A LOCAL MARKET FOR SUCH USED EQUIPMENT, EXCEPT FOR ITEMS ON FORBIDDEN IMPORT LIST, SUCH AS PASSENGER AUTOMOBILES. SPARE PARTS SUPPLY PROVISIONS USUALLY ARE INCLUDED IN CONTRACTS.

15. IT WOULD NOT BE TOO FAR OFF THE MARK TO SAY THAT IN SYRIA ALMOST EVERYTHING COMMERCIAL IS NEGOTIABLE. GOVERNMENT CONTRACTING REGULATIONS ALLOW MINISTERS AND OTHER RESPONSIBLE GOVERNMENT AGENTS TO WAIVE CERTAIN RULES AND PROCEDURES IF THEY DEEM IT IN THE PUBLIC INTEREST. THE GOVERNMENT HAS PROVIDED EXEMPTIONS FOR INDIVIDUAL CONTRACTS UNDER SPECIAL ADMINISTRATIVE AND LEGISLATIVE DECREES. THE RESULT IS A THICKET OF COMPLEX, SOMETIMES CONTRADICTORY REGULATIONS GOVERNING PUBLIC SECTOR

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CONTRACTS; SOME OF THESE REGULATIONS HAVE BEEN IN FORCE SINCE 1946. THE GOVERNMENT IS PRESENTLY STUDYING A WHOLESALE REVISION AND SIMPLIFICATION OF THE COMMERCIAL CODE; IF AND WHEN THE REVISED CODE IS APPROVED AND PUBLISHED, WE WILL SUPPLY USDOC WITH A COPY.

WE MUST CONCLUDE WITH THE OBSERVATION THAT AMERICANS TO DATE HAVE HAD RELATIVELY EXPERIENCE DEALING WITH THESE CONTRACTING RULES AND REGULATIONS. ALTHOUGH US SALES TO SYRIA CONTINUE TO RISE RAPIDLY, AMERICAN FIRMS HAVE LANDED NO LARGE CONSTRUCTION

OR SERVICES CONTRACTS AGAINST THIRD-COUNTRY COMPETITION.
UNTIL NOW, ONLY ONE US FIRM HAS SIGNED A CONTRACT-FOR CONSULTANCY
SERVICES--ON AN USAID FINANCED PROJECT. MORE USAID/RLATED
CONTRACTS WILL SOON FOLLOW, AND MORE US FIRMS APPEAR TO BE
BIDDING ON LARGE SYRIAN PROJECTS IN COMPETITION WITH EUROPEAN
AND JAPENSE COMPANIES. INCREASED BARGAINING EXPERIENCE SHOULD
ENABLE BOTH AMERICAN SUPPLIERS AND SYRIANBUYERS TO BETTER
APPRECIATE EACH OTHERS NEEDS AND METHODS AND THUS CONTRIBUTE
TO THE EVOLUTION OF MUTUALLY SATISFACTORY CONTRACTING
PROCEDURES.
MURPHY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
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Current Classification: UNCLASSIFIED
Concepts: n/a
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Executive Order: N/A
Errors: N/A
Expiration:
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From: DAMASCUS
Handling Restrictions: n/a
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Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
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Page Count: 7
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Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
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Review Event:
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Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3244441
Secure: OPEN
Status: NATIVE
Subject: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES
TAGS: BENC, BGEN, SY
To: COM
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/5171c1bf-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009